

EXHIBIT 3

Shaw, Todd

From: Little, Alex <Alex.Little@burr.com>
Sent: Thursday, January 6, 2022 12:46 PM
To: Barrett, Claudia M.
Cc: Papez, Elizabeth P.; Garnett, Stanley; Stokes, Patrick F.; Dziuban, Michael R.; Moyé, Veronica S.; Smart, Adam; Mack, Emily; Houseal, Amanda K.; George Calhoun; jtrusty@ifrahlaw.com
Subject: Re: Amazon v. WDC Holdings et al - Correspondence re Deficient Disclosures

[WARNING: External Email]

That works for me. Thank you.

On Jan 6, 2022, at 11:25 AM, Barrett, Claudia M. <CBarrett@gibsondunn.com> wrote:

[EXTERNAL EMAIL]

Does 2:30pm Eastern Friday work on your end for a call? If so, I can send a dial in.

Claudia M. Barrett
Of Counsel

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.887.3642 • Fax +1 202.530.9619
CBarrett@gibsondunn.com • www.gibsondunn.com

From: Little, Alex <Alex.Little@burr.com>
Sent: Wednesday, January 5, 2022 1:06 PM
To: Papez, Elizabeth P. <EPapez@gibsondunn.com>; Garnett, Stanley <SGarnett@bhfs.com>; Barrett, Claudia M. <CBarrett@gibsondunn.com>; Stokes, Patrick F. <PStokes@gibsondunn.com>; Dziuban, Michael R. <MDziuban@gibsondunn.com>; Moyé, Veronica S. <VMoye@gibsondunn.com>
Cc: Smart, Adam <asmart@burr.com>; Mack, Emily <emack@burr.com>; Houseal, Amanda K. <ahouseal@bhfs.com>; George Calhoun <george@ifrahlaw.com>; jtrusty@ifrahlaw.com
Subject: Re: Amazon v. WDC Holdings et al - Correspondence re Deficient Disclosures

[WARNING: External Email]

Thank you. As I said, I'm wide open on Friday.

In the interim, if you are willing to share the case law you mention in your email, that may move things along and make Friday's call more productive.

Best,
Alex

From: "Papez, Elizabeth P." <EPapez@gibsondunn.com>

Date: Wednesday, January 5, 2022 at 10:48 AM

To: "Little, Alex" <Alex.Little@burr.com>, "Garnett, Stanley" <SGarnett@bhfs.com>, "Barrett, Claudia M." <CBarrett@gibsondunn.com>, "Stokes, Patrick F." <PStokes@gibsondunn.com>, "Dziuban, Michael R." <MDziuban@gibsondunn.com>, "Moyé, Veronica S." <VMoye@gibsondunn.com>

Cc: "Smart, Adam" <asmart@burr.com>, "Mack, Emily" <emack@burr.com>, "Houseal, Amanda K." <ahouseal@bhfs.com>, George Calhoun <george@ifrahlaw.com>, "jtrusty@ifrahlaw.com" <jtrusty@ifrahlaw.com>

Subject: RE: Amazon v. WDC Holdings et al - Correspondence re Deficient Disclosures

[EXTERNAL EMAIL]

Thanks Alex. I'm glad we agree on the need to try to avoid unnecessary motions practice. We'll revert on some times for Friday since we have court tomorrow and then the D&O discussion. Disagree on the rest for reasons we've noted, the law supports, and we're happy to elaborate as necessary or helpful.

Elizabeth P. Papez

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
Washington, DC 20036
Tel +1 202.955.8608 (o)
Tel +1 703.887.2062 (m)
EPapez@gibsondunn.com
www.gibsondunn.com

From: Little, Alex <Alex.Little@burr.com>

Sent: Wednesday, January 5, 2022 11:38 AM

To: Papez, Elizabeth P. <EPapez@gibsondunn.com>; Garnett, Stanley <SGarnett@bhfs.com>; Barrett, Claudia M. <CBarrett@gibsondunn.com>; Stokes, Patrick F. <PStokes@gibsondunn.com>; Dziuban, Michael R. <MDziuban@gibsondunn.com>; Moyé, Veronica S. <VMoye@gibsondunn.com>

Cc: Smart, Adam <asmart@burr.com>; Mack, Emily <emack@burr.com>; Houseal, Amanda K. <ahouseal@bhfs.com>; George Calhoun <george@ifrahlaw.com>; jtrusty@ifrahlaw.com

Subject: Re: Amazon v. WDC Holdings et al - Correspondence re Deficient Disclosures

[WARNING: External Email]

Elizabeth,

Per my letter, we requested supplementation by January 4 and January 7, respectively. Claudia's email offered only vague assurances of some sort of supplementation on or about January 21. This does not suffice. And there is no real argument that your disclosures are sufficient. The fact that you have made various conflicting statements about your client's damages is exactly why we need to know exactly what categories you actually are claiming as damages, the amount of those damages, and (more importantly) the documentary support for your position. Under the Rules, this was due to us a month ago.

I don't want to waste the Court's resources any more than you do, but it's your client's deficiencies that are putting us in the position of having to go that route. And we will ask for sanctions if we file a Rule 37

motion, exactly because this exercise is so unnecessary had your client lived up to its obligations. This is its lawsuit, after all.

In terms of an agenda for the call, I would propose that we discuss (a) what sort of supplementation you are offering, and a firm deadline for doing so, in hopes that we can avoid a motion and, if not, (b) what basis you have to assert that your current one-sentence disclosure (without accompanying documentation) satisfies the requirements of the Rule, so that we can narrow the dispute for the Court.

I am available Thursday afternoon after Court until 3 pm EST or anytime on Friday.

Best,
Alex

From: "Papez, Elizabeth P." <EPapez@gibsondunn.com>

Date: Tuesday, January 4, 2022 at 5:39 PM

To: "Garnett, Stanley" <SGarnett@bhfs.com>, "Little, Alex" <Alex.Little@burr.com>, "Barrett, Claudia M." <CBarrett@gibsondunn.com>, "Stokes, Patrick F." <PStokes@gibsondunn.com>, "Dziuban, Michael R." <MDziuban@gibsondunn.com>, "Moyé, Veronica S." <VMoye@gibsondunn.com>

Cc: "Smart, Adam" <asmart@burr.com>, "Mack, Emily" <emack@burr.com>, "Houseal, Amanda K." <ahouseal@bhfs.com>, George Calhoun <george@ifrahlaw.com>, "jtrusty@ifrahlaw.com" <jtrusty@ifrahlaw.com>

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[EXTERNAL EMAIL]

All – we're happy to meet and confer if you wish, though Alex your letter requested a conference only in the scenario where we refused to supplement our disclosures, and since we've agreed to do so even though there are no deficiencies in what we already served – indeed your correspondence confirms you have extraordinary visibility into our damages claims for this stage of the case -- we don't see the point of your conference request and would appreciate an agenda for what you'd like to discuss. Stan if the requests are injunction related per your note below, we'd encourage you to re-read the Fourth Circuit opinion on the difference between equitable recovery and damages recoverable at law.

Further, if the point of the conference is to tee up a Rule 37 motion, we would urge you to consider the waste of resources and undue burden to the Court of filing papers that will be mooted by our agreed supplement by the time the papers are fully briefed. If you wish to have a conference anyway, Alex your letter requested our availability this week, not tomorrow, when I and others here have conflicts. We could try to find a time Thursday after court or Friday if that makes sense.

Please let us know. Thanks and regards,

Elizabeth P. Papez

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, NW
Washington, DC 20036
Tel +1 202.955.8608 (o)
Tel +1 703.887.2062 (m)
EPapez@gibsondunn.com
www.gibsondunn.com

From: Garnett, Stanley <SGarnett@bhfs.com>
Sent: Tuesday, January 4, 2022 5:40 PM
To: Little, Alex <Alex.Little@burr.com>; Barrett, Claudia M. <CBarrett@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>; Stokes, Patrick F. <PStokes@gibsondunn.com>; Dziuban, Michael R. <MDziuban@gibsondunn.com>; Moyé, Veronica S. <VMoye@gibsondunn.com>
Cc: Smart, Adam <asmart@burr.com>; Mack, Emily <emack@burr.com>; Houseal, Amanda K. <ahouseal@bhfs.com>; George Calhoun <george@ifrahlaw.com>; jtrusty@ifrahlaw.com
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[WARNING: External Email]

And, it goes without saying, Amazon was not shy about repeatedly asserting a specific amount of damages to get the TRO and injunction, even though we have always argued that those numbers are not accurate and not supported by the evidence.

Look forward to seeing everyone on Thursday am.

Stanley L. Garnett

Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202
303.223.1286 tel
303.668.3113 cell
SGarnett@bhfs.com

Brownstein - we're all in.

From: Little, Alex <Alex.Little@burr.com>
Sent: Tuesday, January 4, 2022 2:18 PM
To: Barrett, Claudia M. <CBarrett@gibsondunn.com>; Papez, Elizabeth P. <EPapez@gibsondunn.com>; Stokes, Patrick F. <PStokes@gibsondunn.com>; Dziuban, Michael R. <MDziuban@gibsondunn.com>; Moyé, Veronica S. <VMoye@gibsondunn.com>
Cc: Smart, Adam <asmart@burr.com>; Mack, Emily <emack@burr.com>; Garnett, Stanley <SGarnett@bhfs.com>; Houseal, Amanda K. <ahouseal@bhfs.com>
Subject: Re: Amazon v. WDC Holdings et al - Correspondence re Deficient Disclosures

Claudia,

We do not believe that timing (and lack of commitment) is sufficient. As noted in my letter, Amazon has had more than two years to provide “a *computation* of each *category* of damages,” and it has done nothing of the sort. Nor has it provided any documents to support its damages calculation. This stands in stark contrast to the statements that you and your colleagues have made to the Court about the alleged certainty of the damage done to the company. Given the importance of this issue to discovery, we want to resolve the issue of your client’s deficiencies quickly.

To that end, please let me know when you and your colleagues can be available for a meet-and-confer call tomorrow. I’ve included counsel for the Watson Defendants on this email, as well, because I believe they share these concerns, and it is most efficient if we all talk at the same time.

Best,

Alex

From: "Barrett, Claudia M." <CBarrett@gibsondunn.com>
Date: Monday, January 3, 2022 at 9:40 PM
To: "Little, Alex" <Alex.Little@burr.com>, "Papez, Elizabeth P." <EPapez@gibsondunn.com>, "Stokes, Patrick F." <PStokes@gibsondunn.com>, "Dziuban, Michael R." <MDziuban@gibsondunn.com>, "Moyé, Veronica S." <VMoye@gibsondunn.com>
Cc: "Smart, Adam" <asmart@burr.com>, "Mack, Emily" <emack@burr.com>
Subject: RE: Amazon v. WDC Holdings et al - Correspondence re Deficient Disclosures

[EXTERNAL EMAIL]

Thanks for your correspondence, Alex. We disagree that there are any deficiencies in Amazon's disclosures; however, we can work to supplement the initial disclosures by or around January 21, though of course will need to reserve the right to additional supplementation as fact discovery unfolds.

Claudia M. Barrett
Of Counsel

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Tel +1 202.887.3642 • Fax +1 202.530.9619
CBarrett@gibsondunn.com • www.gibsondunn.com

From: Little, Alex <Alex.Little@burr.com>
Sent: Tuesday, December 28, 2021 2:28 PM
To: Papez, Elizabeth P. <EPapez@gibsondunn.com>; Stokes, Patrick F. <PStokes@gibsondunn.com>; Barrett, Claudia M. <CBarrett@gibsondunn.com>; Dziuban, Michael R. <MDziuban@gibsondunn.com>; Moyé, Veronica S. <VMoye@gibsondunn.com>
Cc: Smart, Adam <asmart@burr.com>; Mack, Emily <emack@burr.com>
Subject: Amazon v. WDC Holdings et al - Correspondence re Deficient Disclosures

[WARNING: External Email]

Dear Counsel,

Please find correspondence attached. If you have any difficulty opening the attachment, please let me know.

Best,
Alex Little

Alex Little
Partner

BURR & FORMAN LLP

222 Second Avenue South, Suite 2000
Nashville, Tennessee 37201

direct 615-724-3203

fax 615-724-3360

Alex.Little@burr.com

Web

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